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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Atif Mikal Burke,

Plaintiff,

v.

U.S. Marshals,

Defendant.

No.

**NOTICE OF REMOVAL**

(Formerly Maricopa County Superior  
Court Case No. CV2023-000081)

PLEASE TAKE NOTICE that the civil action *Atif Mikal Burke v. U.S. Marshals*, filed in the Maricopa County Superior Court at Case No. CV2023-000081, is hereby removed to this Court by the United States Marshals Service (“USMS”) (improperly named as the U.S. Marshals) pursuant to 28 U.S.C. § 1442(a)(1). The United States submits this Notice of Removal for the following reasons:

1. On or about January 4, 2023, Plaintiff filed a Complaint against the “U.S. Marshals” in the Superior Court of Arizona in Maricopa County at case number CV2023-000081.

2. In the Complaint, Plaintiff alleged that “Defendant wrongfully imprisoned the plaintiff for 18 months in a federal facility.” Complaint at ¶ 5. The Complaint is otherwise devoid of any factual allegations.

1           3.       The USMS was served by a Maricopa County Deputy Sherriff on January 5,  
2 2023.<sup>1</sup>

3           4.       Plaintiff has not served the United States Attorney for the District of Arizona  
4 or the Attorney General.

5           7.       Tort claims against the United States for the actions of its employees are  
6 subject to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671, *et seq.*

7           8.       The United States district courts have “exclusive jurisdiction of civil actions  
8 on claims against the United States” for claims governed by the FTCA, 28 U.S.C. §  
9 1346(b)(1), and the FTCA authorize suit only against the United States and not against its  
10 agencies or its employees for acts or omissions while acting within scope of their federal  
11 employment, 28 U.S.C. § 2679.

12           9.       The United States has the statutory authority to remove this action to federal  
13 court pursuant to 28 U.S.C. § 1442(a)(1), which authorizes the removal of actions filed in  
14 state courts against federal agencies.

15           10.      As required by 28 U.S.C. § 1446(a) and LRCiv 3.6(b), copies of all process,  
16 pleadings, and orders filed in the state court proceeding are attached.

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18 <sup>1</sup> Defendant notes that the case number on the summons issued to the U.S. Marshals is  
19 CV2023-000080, which is a different matter than the one being removed. It appears that  
20 Plaintiff has a second action pending before the Maricopa County Superior Court at Case  
21 No. CV2023-000080, but that action is only against the City of Phoenix. According to the  
22 case history available on the Maricopa County Superior Court’s website the Affidavit of  
23 Service in Case No. CV2023-000080 (*Burke v. City of Phoenix*) reflects that service was  
24 effectuated upon the “U.S. Marshals.” The Affidavit of Service in Case No. CV2023-  
25 000081 (*Burke v. U.S. Marshals*) reflects that service was effectuated upon the City of  
26 Phoenix. The online case history for CV2023-000081 lists the U.S. Marshals and the City  
27 of Phoenix as defendants in that action, but the City of Phoenix is not named in the complaint  
28 that was served on the USMS. It is unclear if this is an error by the Superior Court or if  
Plaintiff has also named the City of Phoenix as a defendant in CV2023-000081 (*Burke v.*  
*U.S. Marshals*). The docket in CV2023-000080 is included with Attachment 2, and a copy  
of the summons issued to the “U.S. Marshals” and the affidavit of service showing service  
on the “U.S. Marshals” bearing case number CV2023-000080 are included with Attachment  
4.

1           11. A copy of this Notice of Removal of Civil Action is being served upon the  
2 Plaintiff, and a copy shall be filed with the Clerk of the Maricopa County Superior Court as  
3 required by 28 U.S.C. § 1446(d) and LRCiv 3.6(a).

4           WHEREFORE, pursuant to 28 U.S.C. § 1442(a)(1), the above-captioned matter is  
5 removed from the Maricopa County Superior Court to the United States District Court for  
6 the District of Arizona for such further proceedings as may be appropriate.

7           Respectfully submitted this 1st day of February, 2023.

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9                               GARY M. RESTAINO  
10                              United States Attorney  
11                              District of Arizona

12                              s/Katherine R. Branch  
13                              KATHERINE R. BRANCH  
14                              Assistant United States Attorney  
15                              Attorneys for the United States  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and mailed a copy of the foregoing to the following individual:

Atif Mikal Burke  
12830 N. Paradise Village Pkwy W  
Apt. 2089  
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Atifburke2585@gmail.com  
*Plaintiff Pro Se*

s/ Mary Finlon  
U.S. Attorney's Office